



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2018-0869]

RIN 1625-AA08

Special Local Regulation; San Diego Bay, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for navigable waters of the San Diego Bay offshore of Harbor Island bound landward of a line by the following coordinates starting west at 32° 43.033' N and 117° 12.792' W and proceeding east to 32° 43.166' N and 117° 12.266' W, proceeding east to 32° 43.166' N and 117° 11.633' W, and ending at 32° 43.100' N and 117° 11.300' W. This special local regulation is necessary to provide for the safety of life on navigable waters during the event. This action will restrict vessel traffic in these waters of the San Diego Bay, from 10:00 a.m. to 6:00 p.m. on October 17, 2018 through October 21, 2018.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until October 21, 2018. For the purposes of enforcement from 10 a.m. to 6 p.m. daily, actual notice will be used from 10 a.m. on October 17, 2018 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2018-0869 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Junior Grade Briana Biagas, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619-278-7656, e-mail D11MarineEventsSD@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. Due to the timing of the event, we are unable to issue a NPRM before the event is scheduled.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This rule is necessary for the safety of life during the event on these navigable waters. For the reasons above, including

the timing of the event, it would be impracticable to delay this rule to provide a full 30 days' notice.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233, which authorizes the Coast Guard to establish and define special local regulations. The COTP San Diego is establishing a special local regulation for the waters of the San Diego Bay bound landward of a line by coordinates starting west at 32° 43.033' N and 117° 12.792' W and proceeding east to 32° 43.166' N and 117° 12.266' W, proceeding east to 32° 43.166' N and 117° 11.633' W, and ending at 32° 43.100' N and 117° 11.300' W. The purpose of this rule is to ensure safety of participants, vessels and the navigable waters in the regulated area before, during, and after the scheduled event.

IV. Discussion of the Rule

This rule establishes a special local regulation from 10:00 a.m. to 6:00 p.m. on October 17, 2018 through October 21, 2018. The special local regulation will cover all navigable waters of the San Diego Bay bound landward of a line by coordinates starting west at 32° 43.033' N and 117° 12.792' W and proceeding east to 32° 43.166' N and 117° 12.266' W, proceeding east to 32° 43.166' N and 117° 11.633' W, and ending at 32° 43.100' N and 117° 11.300' W. The purpose of this rule is to ensure safety of participants, vessels and the navigable waters in the regulated area before, during, and after the scheduled event. Persons and vessels will be prohibited from anchoring, blocking, loitering, or impeding within this regulated waterway unless authorized by the COTP, or his designated representative, during the specified dates and times. Additionally, movement of all vessels within the regulated area and entry of all vessels into the

regulated area will be restricted. The Coast Guard will publish information on the event in the weekly LNM.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance, it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on size, location, duration, and time-of-day of the special local regulation. The Coast Guard will publish a LNM that details the vessel restrictions of the regulated area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental

jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the impacted portion of the San Diego Bay bound landward of a line by coordinates starting west at 32° 43.033' N and 117° 12.792' W and proceeding east to 32° 43.166' N and 117° 12.266' W, proceeding east to 32° 43.166' N and 117° 11.633' W, and ending at 32° 43.100' N and 117° 11.300' W from 10:00 a.m. to 6:00 p.m. on October 17, 2018 through October 21, 2018.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishment of marine event special local regulations on a portion of the navigable waters of the San Diego Bay. It is categorically excluded from further review under paragraph L61 and L63(b) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100--SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C 1233; 33 CFR 1.05-1.

2. Add § 100.35T11-0869 to read as follows:

§ 100.35T11-0869 Special Local Regulation for Marine Event; San Diego Bay, San Diego, CA.

(a) Regulated area. The following location is a regulated area: All navigable waters of San Diego Bay bound landward of a line by coordinates starting west at 32° 43.033' N and 117° 12.792' W and proceeding east to 32° 43.166' N and 117° 12.266' W, proceeding east to 32° 43.166' N and 117° 11.633' W, and ending at 32° 43.100' N and 117° 11.300' W

(b) Definitions. The term “designated representative” means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port San Diego in the enforcement of the regulated areas.

(c) Special local regulations. (1) Persons and vessels will be prohibited from anchoring, blocking, loitering, or impeding within this regulated waterway unless authorized by the COTP, or his designated representative, during the dates and times listed in paragraph (d) of this section.

(2) Movement of all vessels within the regulated area and entry of all vessels into the regulated area will be restricted.

(3) To seek permission to enter the regulated area, contact the Captain of the Port (COTP) San Diego or the COTP's designated representative.

(4) The Coast Guard will publish a notice in the Eleventh Coast Guard District Local Notice to Mariners and issue a Safety Marine Information Broadcast of VHF-FM marine band radio announcing specific event location, dates and times.

(d) Enforcement period(s). Daily from 10:00 a.m. to 6:00 p.m. on October 17, 2018 through October 21, 2018.

Dated: October 2, 2018.

J.R. Buzzella,

Captain, U.S. Coast Guard,

Captain of the Port San Diego.

[FR Doc. 2018-22736 Filed: 10/17/2018 8:45 am; Publication Date: 10/18/2018]